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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/632,642	08/01/2003	Joseph R. Habert	1966-152	2756
22440	7590	06/07/2004	EXAMINER	
GOTTLIEB RACKMAN & REISMAN PC 270 MADISON AVENUE 8TH FLOOR NEW YORK, NY 100160601			HOEY, ALISSA L	
			ART UNIT	PAPER NUMBER
			3765	

DATE MAILED: 06/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/632,642	<b>Applicant(s)</b> HABERT, JOSEPH R. <span style="float: right;">an</span>	
	<b>Examiner</b> Alissa L. Hoey	<b>Art Unit</b> 3765	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 01 August 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the object being releasable attached to the sock of claim 20, must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 102***

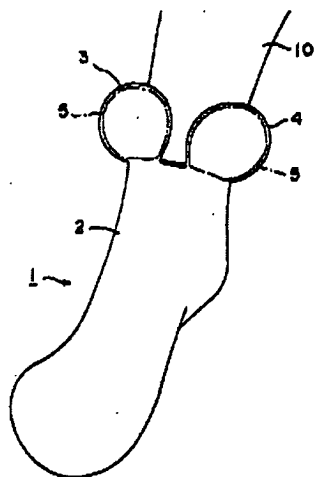
2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 7, 11 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Hirano (US 5,325,545).

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(14) Furthermore, in addition to the formed ears as mentioned above, when a face of an animal is formed by drawing a pattern on the sock main body 2 with yarn of a different color, or by sewing a piece of cloth or button, or by forming protrudings and recesses at the time of knitting the sock main body 2, the interest will be further increased. Moreover, if a pattern representing a hole of the ear is drawn on the surface of each of the bags 3 and 4, the bags 3 and 4 will be more look like the ears.

In regard to claim 1, Hirano provides a three dimensional object attached to the sock near the foot opening and the object including a skin and stuffing (figure 9, identifiers 3-5: column 1, lines 27-37 and column 2, lines 37-62). Also provided on the sock of Hirano is indicia being related visually to the stuffed object (figure 9, identifier 5: column 3, lines 43-52). The indicia is in the form of an animal face and is formed by drawing a pattern on the sock with yarn of a different color, sewing a piece of cloth or button, or by forming protruding recesses during the knitting process (column 3, lines 43-52).

In regard to claim 7, Hirano provides indicia that is two dimensional, since yarn being sewn to a pattern on the body of the sock is a two dimensional decorative indicia (column 3, lines 43-52).

In regard to claim 11, Hirano provides indicia comprising a visual illustration, since yarn in the form of a pattern is visual illustration (column 3, lines 43-52).

In regard to claim 13, Hirano provides the indicia comprises a design since, yarn being sewn to a pattern on the body of the sock in the form of an animal face is a design (column 3, lines 43-52).

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 2-6, 8-10, 12 and 14-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hirano.

Hirano provides a sock with stuffed object and indicia as described above in claims 1, 7 and 11. However, Hirano fails to teach the stuffed object being a miniaturized toy, an animal head, an animal, an electronic device or a cellular phone. Further, Hirano fails to teach the indicia comprising a word, a phrase, a number, a fictional character, indicia visually similar to the stuffed object, a drawing of the stuffed object, a word which is the common name of the stuffed object, a word that embodies an act performed during a use or creation of a version of the object or a phrase that is normally associated with the object.

At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to have provided the stuffed object being a miniaturized toy, an animal head, an animal, an electronic device or a cellular phone because Applicant has not disclosed that providing the stuffed object in the form

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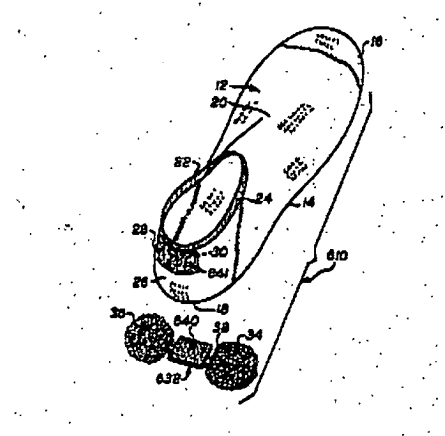
of a miniaturized toy, an animal head, an animal, an electronic device or a cellular phone, provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with the stuffed object being in any form including animal ears because as long as there is a stuffed object on a sock to add to the aesthetic appeal of the sock it doesn't matter what form it takes. Therefore, it would have been an obvious matter of design choice to modify Hirano to obtain the invention as specified in claims 2-6.

At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to have provided the indicia comprising a word, a phrase, a number, a fictional character, indicia visually similar to the stuffed object, a drawing of the stuffed object, a word which is the common name of the stuffed object, a word that embodies an act performed during a use or creation of a version of the object or a phrase that is normally associated with the object because Applicant has not disclosed that providing the indicia in the form of a word, a phrase, a number, a fictional character, indicia visually similar to the stuffed object, a drawing of the stuffed object, a word which is the common name of the stuffed object, a word that embodies an act performed during a use or creation of a version of the object or a phrase that is normally associated with the object provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with indicia being in the form of an animal face because as long as the sock has indicia that

in some way adds to the aesthetic appeal of the sock . Therefore, it would have been an obvious matter of design choice to modify Hirano to obtain the invention as specified in claims 8-10, 12 and 14-19.

6. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hirano in view of Traenkle (US 4,106,126).

Hirano provides a sock with a stuffed object and indicia. However, Hirano fails to teach the stuffed object being releasably attached to the sock.



In regard to claim 20, Traenkle provides an object that is releasably attached to a sock near the sock opening (figure 9, identifiers 28, 30, 34, 36, 640, 641, and 642).

It would have been obvious to have provided the sock with stuffed object of Hirano with the releasable attachment of Traenkle, since the stuffed object of Hirano being attached with releasable means would allow the stuffed object to be separated from the sock during laundering so as to preserve the shape of the stuffed object and also allows the user the ability to interchange and/or replace one stuffed object with another.

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***Conclusion***


7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Adeli, Hill, Jr., Griffin et al., Daly, Fritsch, Rosen, Johnson, Ross et al., Mizrahi, Cowgill et al., Martin, Tobias, Favero et al., Cardwell et al., Tann, Bosersema, Carter, Jr., Penet et al. and Garneau are all cited to show closely related garments.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alissa L. Hoey whose telephone number is (703) 308-6094. The examiner can normally be reached on M-F (8:00-5:30) Second Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on (703) 305-1025. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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